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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 10, Original

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,
Defendants.

BRIEF OF THE STATE OF MISSISSIPPI IN OPPOSITION TO MOTION FOR JUDGMENT ON AMENDED COMPLAINT.

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QUESTIONS PRESENTED

1. Whether the State of Mississippi is entitled to the lands, minerals and other things underlying the Gulf of Mexico more than three geographic miles seaward from the ordinary low-water mark and from the outer limit of inland waters on its coast and extending seaward to a distance of three marine leagues from said coast line, said three league line, however, not to exceed six leagues from the shore of said State.

2. Whether the United States is entitled to an accounting by the State of Mississippi for any sums of money derived by it after June 5, 1950, from such lands and minerals situated more than three geographic miles seaward from the coast line of said State.

STATEMENT

The State of Mississippi has joined with the four other defendant states herein in filing in this Court a brief on points common to all of said states in the defense of this cause. This course was followed for the purpose of avoiding needless repetition and undue prolixity in the briefs of the several states, particularly as regarding the following propositions which are set forth and argued in said joint brief; first, the intent of the Congress in its passage of the Submerged Lands Act, 67 Stat. 29, and, second, the issue of the relevancy and effect of international law upon the issues herein, which was raised by the Solicitor General in his pleadings and brief.

With regard to the aforesaid first proposition, it is our contention that the said Act vested in the State of Mississippi title to and ownership of the submerged lands underlying the Gulf of Mexico to a distance of three marine leagues from its coast line (not to exceed, however, six leagues from shore), as well as the natural resources within such lands and waters, and further recognized, confirmed, established and vested in the State of Mississippi the exclusive right and power to manage, administer, lease, develop, and use the said lands and natural resources. With regard to the aforesaid second proposition, it is our contention that this controversy is wholly a domestic one and a matter upon which international law has no bearing. However, we join with the other defendants in arguing in said joint brief that even if this court should hold that international law is relevant to the issues herein, still none of the Gulf Coast states, including the State of Mississippi, are precluded from being vested with property rights in the lands, minerals and other things under-

lying the Gulf of Mexico within three marine leagues from coast which were granted to them and confirmed in them by said Act.

Therefore, since said propositions and other matters common to all of the defendant states have been argued in said joint brief filed in this Court, we shall endeavor to avoid needless repetition and confine our discussion here to matters peculiarly applicable to the State of Mississippi, and particularly to show that prior to and at the time the State of Mississippi became a member of the Union, its seaward boundary extended six marine leagues from shore into the Gulf of Mexico.

The Solicitor General admits in his brief (Government's brief, page 254) that Mississippi Sound is inland water and that the lands underlying same passed to the State of Mississippi upon its entry into the Union. The Solicitor General concedes that the "coast line" of the State of Mississippi is the seaward side of said islands marking the outer limit of the inland waters of Mississippi Sound, and that Mississippi has a marginal belt extending three miles seaward from said islands. Thus, this controversy involves only the submerged lands and natural resources located *between* a line drawn parallel with and *three geographic miles* into the Gulf of Mexico from the seaward side of said islands *and* a line which is parallel with said three mile line and *three leagues* into the Gulf from the seaward side of said islands, said three league line, however, not to exceed six leagues from shore.

SUMMARY OF ARGUMENT

That portion of the State of Mississippi which is south of the 31st degree of north latitude is a part of the territory which was known as West Florida. West

Florida was so named by a proclamation issued by George III of Great Britain on October 7, 1763, which proclamation also defined and established the southern boundary of West Florida as being six leagues from coast in the Gulf of Mexico. Subsequent transfers of West Florida did not define the boundaries of said territory; therefore, the six league seaward boundary remained fixed and existed at the time the United States acquired title to that portion of West Florida west of the Perdido River from France by the Treaty of Paris of April 30, 1803, (commonly known as the Louisiana Purchase).

Thereafter, the United States in the Enabling Act of Congress of March 1, 1817, described the southern boundary of what is now the State of Mississippi as being six leagues from shore in the Gulf of Mexico. The Constitution of 1817 adopted by the people of the western part of the Mississippi Territory, which later in the same year became the State of Mississippi, likewise described the southern boundary as being six leagues from shore in the Gulf. On December 10, 1817, by the Act of Admission passed by Congress, Mississippi was admitted as a State into the Union and its boundaries were fixed by reference to the aforesaid Enabling Act.

All of Mississippi's Constitutions, to and including the Mississippi Constitution of 1890, which is the last Constitution adopted by the State of Mississippi, have described the southern boundary as being six leagues from shore.

The Submerged Lands Act of May 22, 1953, passed by the Congress and approved by the President, recognized, confirmed, established and vested title in the State of Mississippi to the submerged lands and natural

resources within three leagues from its coast line into the Gulf of Mexico, not to exceed, however, six leagues from its shore. For under said Act, a Gulf Coast state whose boundary, as it existed prior to or at the time such state became a member of the Union, or as theretofore approved by Congress, extended more than three geographic miles from its coast line into the Gulf, is entitled to the submerged lands and natural resources to the extent of such boundary, not to exceed, however, three leagues from coast into the Gulf.

In reply to the Government's allegation that the United States is entitled to an accounting by the State of Mississippi for any sums of money derived by it after June 5, 1950, from the lands and minerals situated more than three geographic miles from the coast line of said State, we contend that there has been no adjudication which is binding upon the State of Mississippi requiring it to make such an accounting. Moreover, we respectfully state that this question is academic at this time since the State of Mississippi has derived no revenue from the lands, minerals and other things underlying the Gulf of Mexico in said area during said period of time.

ARGUMENT

I

THE BOUNDARY OF MISSISSIPPI EXTENDED SIX LEAGUES FROM SHORE INTO THE GULF OF MEXICO PRIOR TO AND AT THE TIME IT BECAME A MEMBER OF THE UNION.

A. *The seaward boundary of West Florida having been established at six leagues into the Gulf of Mexico, such boundary remained in existence in the hands of the several nations through whom title passed*

prior to and including its acquisition by the United States.

Making reference to the Treaty of Paris, concluded between Great Britain, France and Spain, on February 10, 1763, this Court stated in its opinion in *Foster v. Neilson,* 2 Pet. 253, 300, 301:

"By that treaty France ceded to Great Britain the river and port of the Mobile, and all her possessions on the left side of the river Mississippi, except the town of New Orleans and the island on which it is situated; and by the same treaty Spain ceded Florida to Great Britain. The residue of Louisiana was ceded by France to Spain, in a separate and secret treaty between those two powers. The King of Great Britain being thus the acknowledged sovereign of the whole country east of the Mississippi, except the island of New Orleans, divided his late acquisition in the south into two provinces, East and West Florida. The latter comprehended so much of the country ceded by France as lay south of the 31st degree of north latitude, and a part of that ceded by Spain."

By proclamation of October 7, 1763, (*American State Papers,* 5 Public Lands 308), George III of Great Britain defined the boundaries of West Florida, establishing the southern boundary at six leagues in the Gulf of Mexico, as follows:

"Thirdly—The Government of West Florida, bounded to the southward by the Gulf of Mexico, *including all islands within six leagues of the coast,* from the river Appalachicola to Lake Ponchartrain; to the westward by the said lake, the Lake Maurepas, and the river Mississippi; to the northward, by a line

drawn due east from that part of the river Mississippi which lies in thirty-one degrees north latitude, to the river Appalachicola or Chatahoochie, and to the eastward by the said river." (Emphasis supplied).

The boundaries of West Florida having been thus defined and established, and the boundaries of East Florida having been likewise defined and established by the aforesaid proclamation as "including all islands within six leagues of the sea coast," subsequent transfers of title to said property merely referred to East and West Florida by name without again defining their boundaries. Therefore, when Great Britain retroceded Florida to Spain by the "Definitive Treaty of Peace and Friendship," signed at Versailles on September 3, 1783, 3 Fla. Stats. (1941) 101, the following language was used in Article V of that document:

"His Britannic Majesty moreover cedes and guarantees in full ownership, to his Catholic Majesty, Eastern Florida as well as Western Florida. * * *"

The next public document which we find dealing with transfer of title to West Florida is the Treaty of Paris of April 30, 1803, between France and the United States, 8 Stat. 200. Prior to the Treaty of Paris, however, a secret treaty had been entered into between France and Spain at St. Ildefonso, the Third Article of which was included in and made a part of said Treaty of Paris. Article I of said Treaty of Paris appears as follows:

"Article I. Whereas, by the article the third of the treaty concluded at St. Ildelfonso, the 9th Vendemiaire, an. 9 (1st October, 1800) between the First Consul of the French Republic and His Catholic

Majesty, it was agreed as follows: 'His Catholic Majesty promises and engages on his part, to cede to the French Republic, six months after the full and entire execution of the conditions and stipulations herein relative to his royal highness the duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it; and such as it should be after the treaties subsequently entered into between Spain and other states.'

"*And whereas*, in pursuance of the treaty, and particularly of the third article, the French Republic has an incontestable title to the domain and to the possession of the said territory: The First Consul of the French Republic desiring to give to the United States a strong proof of his friendship, doth hereby cede to the said United States, in the name of the French Republic, forever and in full sovereignty, the said territory with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French Republic, in virtue of the above-mentioned treaty, concluded with his Catholic Majesty."

B. *The Executive, Legislative and Judicial branches agreed that title to the area south of the thirty-first degree of north latitude, east of the Mississippi River and west of the Perdido River was acquired under the Treaty of Paris of April* 30, 1803.

On February 24, 1804, Congress passed an Act, 2 Stat. 251, for laying and collecting duties on imports and tonnage within the territories ceded to the United States by the Treaty of Paris of April 30, 1803, which Act provided that

"* * * the territories ceded to the United States by the treaty above mentioned, and also all the navigable waters, rivers, creeks, bays, and inlets, lying within the United States, which empty into the Gulf of Mexico, east of River Mississippi, shall be annexed to the Mississippi district, and shall, together with the same, constitute one district, to be called the 'District of Mississippi'."

By proclamation dated October 27, 1810, 1 Richardson, *Messages and Papers of the Presidents,* 480, 481, President Madison ordered that possession be taken of the territory lying south of the Mississippi Territory and between the Mississippi and Perdido rivers, as follows:

"Whereas the territory south of the Mississippi Territory and eastward of the river Mississippi, and extending to the river Perdido, of which possession was not delivered to the United States in pursuance of a treaty concluded at Paris on the 30th April, 1803, has at all times, as is well known, been considered and claimed by them as being within the colony of Louisiana conveyed by the said treaty in the same extent that it had in the hands of Spain and that it had when France originally possessed it; and

"Whereas the acquiescence of the United States in the temporary continuance of the said territory under the Spanish authority was not the result of any distrust of their title, * * * but was occasioned by their conciliatory views and by a confidence in the justice of their cause and in the success of candid discussion and amicable negotiation with a just and friendly power; * * * * * * * * *

"Whereas a crisis has at length arrived subversive of the order of things under the Spanish authorities, whereby a failure of the United States to take the said territory into its possession may lead to events ultimately contravening the views of both parties

* * *

"Now be it known that I, James Madison, President of the United States of America, * * * have deemed it right and requisite that possession should be taken of the said territory in the name and behalf of the United States * * * ."

As stated by this Court in *Louisiana v. Mississippi*, 202 U.S. 1, 44, "The River Perdido is in the state of Alabama east of the state of Mississippi, and flows into the Gulf of Mexico between Mobile bay, in Alabama, and Pensacola bay, in Florida."

By Act of Congress of May 14, 1812, 2 Stat. 734, the boundaries of the Mississippi Territory were enlarged to include

"* * * all that portion of territory lying each of Pearl River, west of the Perdido, and south of the thirty-first degree of latitude * * * ."

By Treaty of Amity, Settlement and Limits of February 22, 1819, 8 Stat. 252, Spain purported to cede East and West Florida to the United States, said Treaty containing the following language:

"Article 2. His Catholic Majesty cedes to the United States, in full property and sovereignty, all the territories which belong to him, situated to the eastward of the Mississippi, known by the name of East and West Florida. The adjacent islands dependent on said provinces, all public lots and squares, vacant

lands, public edifices, fortifications, barracks, and other buildings, which are not private property, archives and documents, which relate directly to the property and sovereignty of said provinces, are included in this article. * * * *

* * * * * * * * *

"Article 6. The inhabitants of the territories which His Catholic Majesty cedes to the United States, by this Treaty, shall be incorporated in the Union of the United States as soon as may be consistent with the principles of the Federal Constitution * * * *."

On the date of the aforesaid Treaty with Spain, the State of Mississippi had already been admitted as a member of the Union (December 10, 1817, 3 Stat. 472), and Alabama was admitted as a State into the Union on December 14, 1819, 3 Stat. 608. The said Treaty was not ratified by Spain until October 24, 1820, nor by the United States until February 22, 1821. Therefore, it is evident that the United States did not rely on this Treaty to assume title to any part of the States of Mississippi and Alabama, but assumed title to the property south of the thirty-first degree of north latitude, east of the Mississippi River, and west of the Perdido River under the Treaty of Paris of April 30, 1803. *Foster v. Neilson*, 2 Pet. 253; *Garcia v. Lee*, 12 Pet. 511.

C. *The Enabling Act of Congress and the Act of Admission fixed Mississippi's seaward boundary at six leagues from shore into the Gulf of Mexico, and Mississippi has at all subsequent times continued to claim such boundary.*

The Congress, exercising the exclusive authority granted to it under Article IV, Section 3, Constitution

of the United States, to admit new States into the Union and to fix their boundaries, admitted Mississippi as a State into the Union by an Act approved December 10, 1817, 3 Stat. 472, and fixed the boundaries of said State by reference to the Enabling Act of March 1, 1817, 3 Stat. 348, as follows:

> "Sec. 2. *And be it further enacted,* that the said state shall consist of *all of the territory included within the following boundaries,* to wit: Beginning on the river Mississippi at the point where the southern boundary line of the state of Tennessee strikes the same, thence east along the said boundary line to the Tennessee river, thence up the same to the mouth of Bear Creek, thence by a direct line to the northwest corner of the county of Washington, thence due south to the Gulf of Mexico, thence westwardly, *including all of the islands within six leagues of the shore,* to the most eastern junction of Pearl river with Lake Borgne, thence up said river to the thirty-first degree of north latitude, thence west along the said degree of latitude to the Mississippi river, thence up the same to the beginning." (Emphasis supplied).

Being mindful of the trust assumed by the United States under the terms of the Treaty of Paris of April 30, 1803, 8 Stat. 200, contained in the following language:

> "Art. III. The inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible according to the principles of the Federal constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; * * * * * * * *",

and no doubt being aware that the seaward boundary of the United States would of necessity be co-extensive with the seaward boundary of the State of Mississippi after its admission into the Union, (see *Commonwealth v. Manchester*, 152 Mass. 230, 241, affirmed 139 U. S. 240; *Harcourt v. Gaillard*, 12 Wheat. 523) the Congress apparently intended to fix the maximum seaward boundary possible.

We submit that it was not coincidental that the six league seaward boundary fixed by Congress was the same as had been proclaimed by a predecessor in the chain of title, George III of Great Britain, in 1763, and which seaward boundary was given effect to in each successive transfer subsequent to the time of the said proclamation. By thus fixing the aforesaid seaward boundary of the State of Mississippi, the United States was asserting its claim and the claim of the State of Mississippi to six leagues into the Gulf of Mexico, the seaward boundary of the United States being co-extensive with the boundary of said State.

D. *Mississippi has always claimed a six league boundary.*

In August, 1817, prior to the adoption of the resolution by Congress on December 10, 1817, admitting Mississippi as a State into the Union, the representatives of the people inhabiting the western part of the Mississippi Territory adopted a constitution (Laws of Mississippi, 5th Session, 1821, p. 159), wherein the boundaries of what is now the State of Mississippi were defined in the preamble as follows:

"We, the representatives of the people inhabiting the western part of the Mississippi territory, *contained within the following limits,* to wit: Beginning on the

River Mississippi, at the point where the southern boundary line of the State of Tennessee strikes the same; thence east along the said boundary line to the Tennessee River; thence up the same to the mouth of Bear Creek; thence by a direct line to the north west corner of the County of Washington; thence due south to the Gulf of Mexico; then westwardly, *including all islands within six leagues of the shore,* to the most eastern junction of Pearl river with Lake Borgne; thence up said river to the thirty-first degree of north latitude; thence west along the said degree of latitude to the Mississippi river; thence up the same to the beginning." (Emphasis supplied)

The boundaries of the State were not changed by the Constitution of the State of Mississippi of 1832 (Laws of Mississippi, 23rd Session, 1839, p. 429).

By the Mississippi Constitution of 1869 (Laws of Mississippi, 1870, p. 33), the boundaries of the said State were defined as follows:

"Article II. *Boundaries of the State.* The limits and boundaries of the State of Mississippi shall remain as now established by law."

By act of Congress, dated February 23, 1870, 16 Stat. 67, stating that: "* * * the people of Mississippi have framed and adopted a constitution of State government which is republican * *", it was declared that the State of Mississippi was again entitled to representation in the Congress of the United States.

The Mississippi Constitution of 1890 (the most recent Constitution and the one now in effect), by Article II, Sec. 3, thereof, defines the boundaries of the said State as follows:

"*The limits and boundaries of the State of Mississippi are as follows,* to wit: Beginning on the Mississippi River (meaning thereby the center of the said river or thread of the stream) where the southern boundary line of the State of Tennessee strikes the same, as run by B. A. Ludlow, D. W. Connelly, and W. Petrie, commissioners appointed for that purpose on the part of the state of Mississippi, A. D., 1837, and J. D. Graham and Austin Miller, commissioners appointed for that purpose on the part of the State of Tennessee; thence east along the said boundary line of the state of Tennessee to a point on the west bank of the Tennessee river, six four-pole chains south of and above the mouth of Yellow creek; thence up the said river to the mouth of Bear creek; thence by a direct line to what was formerly the northwest corner of the county of Washington, Alabama; thence on a direct line to a point ten miles east of the Pascagoula river on the Gulf of Mexico; thence westwardly, *including all of the islands within six leagues of the shore,* to the most eastern junction of the Pearl river with Lake Borgne * * * * *." (Emphasis supplied).

Moreover, the statutes of the State of Mississippi from the time of adoption of the Mississippi Constitution of 1817, as aforesaid, in addition to the aforesaid provisions of its several constitutions, make clear the claim of the State of Mississippi to a seaward boundary extending six leagues from shore into the Gulf of Mexico.

Also, the cross-bill filed by the State of Mississippi in *Louisiana v. Mississippi,* 202 U. S. 1, 18, alleged that Mississippi had " 'exercised sovereignty and jurisdiction over said waters within eighteen miles [apparently

referring to nautical miles] of her shore aforesaid,' and that by her statutes as codified in 1857 had asserted such jurisdiction.

"And that by the legislation of Congress and the State, the '"Mississippi Sound" was recognized as a body of water, six leagues wide, wholly within the State of Mississippi, from Lake Borgne to the Alabama line, separate and distinct from "the Gulf of Mexico."'"

We respectfully submit that the Act of Congress admitting Mississippi as a State into the Union, 3 Stat. 472, by reference to the Enabling Act of Congress of March 1, 1817, and the constitution adopted by Mississippi while it was still a territory, prior to its admission into the Union, unquestionably established the seaward boundary of Mississippi at six leagues from shore into the Gulf of Mexico. The Enabling Act aforesaid spoke of the State as consisting of "* * * all that part of the Mississippi Territory which lies *within* the following boundaries * * *" and concluded with the further description "* * * *including* all of the islands within six leagues of the shore * * *." (Emphasis supplied). The people of the western part of the Mississippi Territory in their Constitution of 1817 prior to being admitted as a State defined the boundaries as "* * * contained *within* the following limits * * * *including* all islands *within* six leagues of the shore * * *." (Emphasis supplied)

In *Majeski v. Stuyvesant Homes*, 140 N. J. Eq. 460, 55 A 2d 33, 38, the court quoted from Webster's International Dictionary (2d Ed.) in defining the word "within" as follows:

"The preposition '*within*' is ordinarily accepted to mean '*inside of,*' '*in the limits or compass of.*' " (Emphasis supplied).

In *Town of Alexandria v. Clark County,* Mo., 231 S. W. 2d 622, 624, the court quoted from Webster's International Dictionary in defining the adverb "within" as " 'In or into the space or part enclosed by the outer surfaces or between encompassing sides; specif.: On the inside or inner side; * * * *Inside the bounds, as of a region;* * * *.' As a preposition 'within' is defined as 'In the inner or interior part of; inside of; *not without;* * * *. In the limits or compass of; * * * *.' "

The word "include" has been thus defined in *United States ex rel. Lyons v. Hines,* 103 F. 2d 737, 740, 70 App. D. C. 36, 122 A.L.R. 674, 678:

"In Montello Salt Co. v. Utah, 221 U.S. 452, 465, 31 S. Ct. 706, 708, 55 L. Ed. 810, Ann. Cas. 1912D, 633, the Supreme Court has adopted the following definition of the Century Dictionary of 'include:' (1) 'to confine within something; hold as in an inclosure; inclose; contain.' (2) 'To comprise as a part, or as something incident or pertinent; comprehend; take in; as the greater includes the less; . . . the Roman Empire included many nations.' Brainard v. Darling, 132 Mass. 218; Henry's Executor v. Henry's Executor, 81 Ky. 342; Neher v. McCook County, 11 S. Dak. 422, 78 N.W. 998; Hibberd v. Slack, C.C., 84 F. 571, 577. Funk & Wagnalls' New Standard Dictionary defines it as follows: '1. to comprise, comprehend, or embrace as a component part, item or member; as, this volume *includes* all his works; the bill *includes* his last purchase. 2. To enclose within; contain; confine; as, an oyster-shell sometimes *includes* a pearl.' "

Hence, it was the clear intent of the people of the western part of the Mississippi Territory when they adopted their constitution in 1817 prior to being admitted into the Union, and also the clear intent of Congress as expressed in said Enabling Act, which was referred to and incorporated in the Act admitting Mississippi as a State into the Union, that the southern boundary of the State of Mississippi was in the Gulf of Mexico at a distance of six leagues from and parallel with the shore. The islands were merely "included" within said six league limit.

On Page 176 of the Solicitor General's brief, it is stated: "It would certainly be surprising to find Congress at that late date claiming a marginal belt of *six* leagues, particularly in view of the fact that only a few years before it had limited Louisiana to islands within *three* leagues." Although the southernmost land area and marginal belt in the Gulf of Mexico of both Mississippi and Alabama was acquired under the Treaty of Paris of April 30, 1803 (Louisiana Purchase) *supra*, the same as Louisiana, the area now forming a part of the States of Mississippi and Louisiana which was acquired thereby had been a part of West Florida and was claimed by virtue of reference to and the inclusion in said Treaty of a portion of the Treaty of St. Ildefonso of October 1, 1800. *Foster v. Neilson, supra; Garcia v. Lee, supra.* East and West Florida received their names by the same Act which fixed the boundary of West Florida at six leagues in the Gulf of Mexico—the proclamation of George III of Great Britain of October 7, 1763, *supra.* What is now the State of Louisiana was not a part of either East or West Florida. Therefore, although that portion of Mississippi and Alabama south of the thirty-first degree of north lati-

tude was acquired by the same Treaty by which France ceded what is now the State of Louisiana to the United States; the chain of title by which the United States acquired the State of Louisiana was different from that by which the southern portions of the States of Mississippi and Alabama were acquired. And in the cases of Mississippi and Alabama, the boundaries of these two states in the Gulf of Mexico were established at the precise distance claimed by George III in his proclamation, *supra*. Therefore, it is not surprising to us, but altogether reasonable, that by the respective Enabling Acts and Acts of Admission of Congress, *supra*, the southern boundaries of Mississippi and Alabama were fixed at six leagues from shore, while Louisiana's boundary was fixed at three leagues from coast.

On page 166, footnote 53, of the Government's brief, the position of Louisiana is attacked by asserting that the Treaty of Paris ceded the "adjacent islands" only and thus the marine area now claimed by Louisiana was not included within the perimeter of "Louisiana," stating that "* * * if it had been the islands would have been *within* it rather than 'adjacent.'"

At this point and also on page 315 of the Government's brief where the Solicitor General makes a similar attack on a provision in the Treaty of February 22, 1819, by which Spain ceded such part of the Floridas as it then owned to the United States, pointing out that the cession included "The adjacent islands dependent on said provinces * * *", the Solicitor General appears to adopt Mississippi's argument relative to its own boundary. Our description does include all islands *within* six leagues of the shore; therefore, following the Solicitor General's reasoning here, it would appear that he concedes that prior to and at the time of the

admission of the State of Mississippi into the Union, title to a marine area or marginal belt within its boundaries had been established.

II

THE SUBMERGED LANDS ACT RECOGNIZED, CONFIRMED, ESTABLISHED, AND VESTED TITLE IN THE STATE OF MISSISSIPPI TO THE SUBMERGED LANDS AND NATURAL RESOURCES LYING THREE MARINE LEAGUES FROM ITS COAST LINE INTO THE GULF OF MEXICO. NO ACCOUNTING SHOULD BE REQUIRED.

It is not our purpose here to re-litigate the cases of *United States v. California*, 332 U. S. 19; *United States v. Louisiana*, 340 U.S. 899; and *United States v. Texas*, 340 U.S. 900. We make our claim to the submerged lands and natural resources within three marine leagues from coast under the Submerged Lands Act of May 22, 1953, *supra*. We do believe, however, that the apparent purpose of this Act was to vest in the littoral states property rights in the submerged lands and natural resources in the marginal seas and the Gulf of Mexico, which rights many people believed to be already vested in said states prior to the decisions of this Court in the aforesaid California, Louisiana and Texas cases. The committee hearings and debates in connection with this Act as well as speeches and letters of the President which are discussed in the defendants' joint brief filed herein, we believe, point up this purpose and intent.

We submit that it is significant that property rights in the submerged lands and natural resources were declared to be vested in the Gulf Coast states to the maximum extent of three leagues from coast, while

the Atlantic and Pacific Coast states were limited to three miles, and the states bordering on the Great Lakes were limited to the international boundary. Despite the arguments of the Solicitor General to the contrary, the three league reference to the Gulf Coast states must be given meaning. It is preposterous to consider that the Congress and the President, in their passage and approval, respectively, of said Act were only making a vain, foolish and useless gesture when they provided that the Gulf states could claim as much as three leagues into the Gulf. It must be conceded that the Congress had the power to vest such property rights in the states to the extent of three leagues from coast. And, in addition, the Chief Executive gave his endorsement of approval to the Act. Moreover, this Act was declared to be constitutional in *Alabama v. Texas*, 347 U.S. 272.

We respectfully submit that we have shown the existence of a seaward boundary extending six leagues from shore into the Gulf of Mexico prior to and at the time the State of Mississippi became a member of the Union. Therefore, under the Submerged Lands Act, the pertinent parts of which are included in the Appendix to this brief, the State of Mississippi owns property rights in the submerged lands and natural resources in the Gulf of Mexico to the extent of three marine leagues from the seaward side of the chain of islands lying south of its shore (these islands being conceded in the Government's brief to be our "coast line") into the Gulf of Mexico, not to exceed, however, six leagues from shore. The exception is added in the preceding sentence since maps indicate that there may be some points at which a three league measurement from coast may exceed six leagues from shore. Two reduced

scale copies of U. S. Coast and Geodetic Survey charts, numbered 1007 and 1267, are included in the Map Appendix herein. Said chart No. 1007 shows all of the Gulf of Mexico and the lands bordering thereon, and said chart No. 1267 shows the major portion of the shore line of the State of Mississippi and all the islands forming the coast line of said State, as well as a portion of the shore line of Alabama.

We deny that this State should be required to make an accounting to the United States for money received from the lands, minerals and other things underlying the Gulf of Mexico, lying within three marine leagues seaward from the coast line (as defined by the Submerged Lands Act, supra) of said State, however, not to exceed six leagues from the shore of said State.

On page 257 of his brief, the Solicitor General agrees that the Submerged Lands Act "* * * established the State's right to the submerged lands and resources within the State boundary and not more than three leagues from the coast * * *." And we contend that the southern boundary of Mississippi, as it existed prior to and at the time it became a member of the Union, and as fixed by all of its state constitutions and statutes, was six leagues from shore in the Gulf of Mexico. Therefore, the lands, minerals and other things underlying the Gulf of Mexico within said area described above are the property of the State of Mississippi, and it should be required to account to no one for the revenues derived therefrom.

On page 28 of the Solicitor General's brief, he contends that under the decisions of this Court in *United States v. Louisiana*, 340 U.S. 899, and *United States v. Texas*, 340 U.S. 900, Mississippi should be required to

account for sums derived by it from the bed of the Gulf of Mexico after June 5, 1950, and further states on said page 28 of said brief that said decrees are controlling "* * * by the principle of *stare decisis.*"

In reply, we submit that the State of Mississippi was not a party to either of the aforesaid causes, and, therefore, is not bound thereby. Moreover, we submit that the State of Mississippi could not sue the United States to determine these property rights because approval of Congress had not been given therefor. It was necessary, therefore, for Mississippi to wait for the United States to sue in order to make this determination. Hence, it would be both unjust and inequitable to hold Mississippi to such an accounting under such circumstances.

In any event, however, the question of an accounting insofar as the State of Mississippi is concerned is at this time an academic one since said State has received no revenue from the lands, minerals and other things underlying the Gulf of Mexico in said area during the period aforesaid.

CONCLUSION

The State of Mississippi respectfully submits that the motion of the United States for judgment on its amended complaint should be denied, and that this Court should adjudge said State to be the owner and holder of title to the submerged lands and natural resources within three marine leagues from its coast line into the Gulf of Mexico, however, not to extend beyond its historic boundary located six leagues from shore in the Gulf.

Should the aforesaid contention of ownership of all of said property not prevail, this defendant submits

that in any event it is at least the owner of or has the right to the natural resources within said area, with the exclusive right of management, administration, leasing, use and development of such lands and natural resources, including the exclusive right to explore for and extract such natural resources from said submerged lands.

The State of Mississippi further respectfully submits that the United States is not entitled to an accounting by said State. Moreover, this defendant submits that the said issue as to the entitlement of said accounting is at this time wholly academic since this State has derived no revenue from such property within said area since June 5, 1950.

If the Court will take judicial notice of the facts and authorities relied upon by this defendant in this brief and in the joint brief of the defendant States, including the appendices annexed thereto, then this defendant does not insist upon taking evidence herein. However, should this Court not take judicial notice of said facts and authorities, then this State submits that its motion for leave to take evidence should be granted.

Respectfully submitted,

JOE T. PATTERSON
Attorney General of Mississippi

JOHN H. PRICE, JR.
Assistant Attorney General

August, 1958.

PROOF OF SERVICE

I, Joe T. Patterson, Attorney General of the State of Mississippi, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ..... day of August, 1958, I served copies of the foregoing brief on the several parties to said cause as follows:

(1) On the United States, by mailing copies in duly addressed envelopes, with air mail postage prepaid, to the Attorney General and the Solicitor General of the United States, respectively, at the Department of Justice Building, Washington 25, D. C., and

(2) On the States of Texas, Louisiana, Alabama and Florida, by mailing copies in duly addressed envelopes, with air mail postage prepaid, to their respective Attorneys General at their respective addresses as follows: Capitol Building, Austin, Texas; Capitol Building, Baton Rouge, Louisiana; Judicial Building, Montgomery, Alabama; and Capitol Building, Tallahassee, Florida.

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JOE T. PATTERSON
Attorney General of Mississippi

APPENDIX

Submerged Lands Act (Public Law 31, 83rd Cong.) May 22, 1953, 67 Stat. 29, 43 U.S.C., Supp. V, 1301-1315.

AN ACT

To confirm and establish the titles of the States to lands beneath navigable waters within the State boundaries and to the natural resources within such lands and waters, to provide for the use and control of said lands and resources, and to confirm the jurisdiction and control of the United States over the natural resources of the seabed of the Continental Shelf seaward of State boundaries.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Submerged Lands Act."

TITLE I

Definition

Sec. 2. (43 U.S.C., Supp. V, 1301) When used in this Act —

(a) The term "lands beneath the navigable waters" means —

* * * * *

(2) all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State

where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles * * *

* * * * *

(b) The term "boundaries" includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 4 hereof but in no event shall the term "boundaries" or the term "lands beneath navigable waters" be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico;

(c) The term "coast line" means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters;

(e) The term "natural resources" includes, without limiting the generality thereof, oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life but does not include water power,

or the use of water for the production of power;

* * * * *

TITLE II

Lands Beneath Navigable Waters Within State Boundaries

Sec. 3. (43 U.S.C., Supp. V, 1311) Rights of The States. —

(a) It is hereby determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are hereby, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States in which the land is located and the respective grantees, lessees, or successors in interest thereof;

(b) (1) The United States hereby releases and relinquishes unto said States and persons aforesaid, except as otherwise reserved herein, all right, title, and interest of the United States, if any it has, in and to all said lands, improvements, and natural re-

sources; (2) the United States hereby releases and relinquishes all claims of the United States, if any it has, for money or damages arising out of any operations of said States or persons pursuant to State authority upon or within said lands and navigable waters; and (3) the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States shall pay to the respective States or their grantees issuing leases covering such lands or natural resources all moneys paid thereunder to the Secretary of the Interior or to the Secretary of the Navy or to the Treasurer of the United States and subject to the control of any of them or to the control of the United States on the effective date of this Act, except that portion of such moneys which (1) is required to be returned to a lessee; or (2) is deductible as provided by stipulation or agreement between the United States and any of said States;

* * * * *

Sec. 4. (43 U.S.C., Supp. V, 1312) Seaward Boundaries. — The seaward boundary of each original coastal State is hereby approved and confirmed as a line three geographical miles distant from its coast line or, in the case of the Great Lakes, to the international boundary. Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line, or to the international boundaries of the United States in the Great Lakes or any other body

of water traversed by such boundaries. Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress.

* * * * *

Sec. 9. (43 U.S.C., Supp. V, 1302) Nothing in this Act shall be deemed to affect in any wise the rights of the United States to the natural resources of that portion of the subsoil and seabed of the Continental Shelf lying seaward and outside of the area of lands beneath navigable waters, as defined in section 2 hereof, all of which natural resources appertain to the United States, and the jurisdiction and control of which by the United States is hereby confirmed.

Note

Two Coast and Geodetic Survey Charts at this point are on Card 44